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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/726,343

12/02/2003

G. W. Jim Johnson III

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02/14/2008

ROPES & GRAY LLP

PATENT DOCKETING 39/41

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BOSTON, MA 02110-2624

EXAMINER

RICHMAN, GLENN E

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

02/14/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/726,343	<b>Applicant(s)</b> JOHNSON, G. W. JIM	
	<b>Examiner</b> Glenn Richman	<b>Art Unit</b> 3764	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The rejection from the prior office action is maintained and incorporated herein by reference.

#### ***Claim Rejections - 35 USC § 102***

The rejection from the prior office action is maintained and incorporated herein by reference.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Darby.

Darby discloses a substantially rigid structure abstract, said substantially rigid structure having an inner surface 0034 and an outer surface 0034, said substantially rigid structure having a plurality of holes 0034 there through at pre-selected locations; and a liner affixed to the inner surface of said substantially rigid structure 0034, said liner provides substantially uniform compression to the body part to prevent the occurrence of window edema 0034, said device is a prosthesis fig. 1, an orthosis fig. 1, said orthosis is selected from the group consisting of an ankle brace, a leg brace, a walking brace, and an arm brace fig. 1, a flexible support member 0034 affixed to the inner surface of said substantially rigid structure, said flexible support member being constructed so as to allow the transfer of moisture from said body portion through said flexible support member and out through the holes in said structure to the atmosphere

0034, said flexible support member is provided with a plurality of holes there through 0034, said holes in said flexible support member being in alignment with said holes in said substantially rigid structure 0034, consisting of an air cell, a cell filled with a gel, a cell filled with a fluid, a solid gel material, a non-porous foam pad, and a porous foam pad abstract, an air cell and said air cell contains a foam material 0023, said flexible support material is a porous material 0034, foam 0024, said porous material is an open-cell 0023, a liner disposed adjacent the affected body portion 0034, said liner being of a material that facilitates the transfer of moisture from the body portion out through said holes of said substantially rigid structure to the atmosphere 0034.

### ***Response to Arguments***

Applicant's arguments filed 11/9/07 have been fully considered but they are not persuasive.

As to the applicant's arguments:

1. Applicants' claim 1 recites an orthopedic appliance for application to a body portion having, among other things, a liner affixed to the inner surface of a substantially rigid structure, the liner being of a material that facilitates the transfer of moisture from the body portion out through the holes of the substantially rigid structure to the atmosphere. Darby does not teach or suggest this feature. Darby teaches a sandal-like device for treating conditions of the foot where redistribution of weight away from the infected or traumatized area is desired (paragraph 0022). His device includes an inner lining made of EVA or soft foam material (paragraph 0029) or Plastizote (paragraph 0007). Applicants submit that Darby does not teach or suggest a liner being of a

material that facilitates the transfer of moisture from the body portion out through the holes of the substantially rigid structure to the atmosphere, as recited in claim 1.

As applicant notes Darby teaches an inner lining made of EVA or **soft foam material** (paragraph 0029). As soft foam material is known to transfer moisture \*, Darby reads on the feature of transferring of moisture from a body portion.

2. Darby's device includes an outer covering (paragraph 0029) but does not teach or suggest an additional flexible support member being constructed to allow the transfer of moisture from the body portion through the flexible support member and out through the holes in the structure to the atmosphere. Examiner has asserted that paragraph 0034 teaches this element (page 2 of Office Action mailed on June 6, 2007), but paragraph 34 says "air holes may be added to the outer covering 340 in order to facilitate outer covering removal in those areas where ulcers are most likely to occur." Applicants respectfully point out that the holes in Darby's outer covering are used to enable the user to further remove the covering to relieve pressure in affected areas, but there is no teaching or suggestion of a flexible support member being constructed so as to allow the transfer of moisture from a body portion through the flexible support member and out through the holes in the structure to the atmosphere. Indeed, as noted above, Darby teaches inner liners such as EVA or Plastizote (paragraphs 0007 and 00029) that do not retain moisture and therefore do not allow the transfer of moisture.

As to 2 above, as noted in 1 above, Darby teaches an inner lining made of EVA or **soft foam material** (paragraph 0029). As soft foam material is known to transfer

moisture \*, Darby reads on the feature of transferring of moisture from a body portion, that would allow the moisture to transfer through the holes in the outer covering.

\*Sherman discloses a foam layer that allows transfer of moisture (col. 5, lines 35-42).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Glenn Richman/ whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenn Richman/  
Primary Examiner  
Art Unit 3764

<div>Application Number</div> <div></div>	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/726,343	JOHNSON, G. W. JIM	
	Examiner	Art Unit	
	Glenn Richman	3764	